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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,572	02/27/2002	David Louis Kaminsky		7957

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David Louis Kaminsky
102 Middlebrook Court
Chapel Hill, NC 27514

EXAMINER

JONES III, CLYDE H

ART UNIT

PAPER NUMBER

2623

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/084,572	Applicant(s) KAMINSKY ET AL.	
	Examiner Clyde H. Jones III	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/27/2002</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 45 and 46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 45 and 46 recite a computer program that is a functional descriptive material (i.e. data structures). Data structures not claimed as embodied in a computer-readable medium are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. The data structure does not define any structural and functional interrelationships between the data and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed **computer-readable medium encoded with a computer program** is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer programs functionality to be realized.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 45 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Houston (US 6,353,929 B1).

Regarding claims 1, 23, 45 and 46, Houston teaches a method (corresponding system and computer program) for measuring access patterns of content transmitted from a server to a client the method comprising the steps of:

A) Transmitting at the server (media research controller 300 –fig.1 & fig. 2) content (media objects) containing a tracking identifier (identification tag) identifying the content (col. 8, lines 33-38; col. 12, lines 19-23; col. 14, lines 16-31; col. 15, lines 50-53; col. 16, lines 10-12; col. 17, lines 60-65; col. 18, lines 41-47);

B) Receiving at the client (Panel Member device 400 – fig. 1/ 205 – fig. 2) the content containing the tracking identifier (col. 8, lines 44-46; col. 11, lines 9-11 & col. 12, lines 46-65; col. 12, lines 6-11; col. 14, lines 36-56; col. 15, lines 3-5 & 33-39; col. 17, lines 44-49; col. 22, lines 51-57; col. 23, lines 15-17; col. 23, lines 46-49);

C) In response to receiving the content at the client, extracting from the content the tracking identifier (col. 8, lines 39-43; col. 11, lines 9-25; col. 12, lines 6-15; col. 12,

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lines 43-45; col. 14, line 67-col. 15, lines 5; col. 15, lines 33-38; col. 17, lines 44-52; col. 19, lines 50-54; col. 22, lines 51-58; col. 23, lines 19-20); and

D) Transmitting from the client to the server the tracking identifier (col. 8, lines 39-46; col. 8, lines 63-66; col. 12, lines 19-23; col. 14, lines 20-26; col. 15, lines 50-54; col. 16, lines 48-51 & 60-65; col. 18, lines 59-67; col. 21, lines 22-27 & 63-66).

Regarding claims 2 and 24, Houston teaches the tracking identifier comprises a URL (col. 11, lines 21-24; col. 17, lines 5-10; col. 18, lines 40-44; col. 23, lines 23-29).

Regarding claims 5 and 27, Houston teaches the content is digital (col. 8, lines 21-27; col. 14, lines 41-44).

Regarding claims 6 and 28, Houston teaches the content is analog (col. 8, lines 25-26; in which Houston teaches CATV and broadcast TV/Radio; the Examiner broadly interprets CATV and over-the-air broadcast to include analog content such as NTSC broadcast TV).

Regarding claims 7 and 29, Houston teaches the content is received from an information provider (110 – fig. 1; the Media research controller provides content (information) to be distributed to the panel members/clients; col. 17, lines 61-65; col. 8, lines 30-32; Houston inherently teaches web sites to provide/receive information from the web; or cable head-end, radio station, etc. – col. 8, lines 24-32).

Regarding claims 8 and 30, Houston teaches the client transmits to the server auxiliary information (metadata or other associated data) along with the tracking identifier (col. 8, lines 39-42; col. 11, lines 15-25; col. 12, lines 10-15; col. 15, lines 33-37; col. 16, lines 60-col. 17, line 20; col. 17, lines 44-58).

Regarding claims 9 and 31, Houston teaches the auxiliary information includes at least one of identification of viewer (col. 11, lines 30-34; col. 15, line 59-col.16, lines 7; col. 17, lines 20-30; col. 17, lines 49-53) and geographic location (col. 15, line 59-col.16, lines 7; col. 4, lines 54-56; col. 8, lines 44-49; col. 13, lines 63-67; Examiner interprets demographics to include geographic location, i.e., products are marketed to audiences fitting a targeted demographic profile, e.g., regional persons with income over \$50,000 who buy cars).

Regarding claims 10 and 32, Houston teaches the client displays the information (content) to a viewer (display/user) (col. 23, lines 46-49; col. 14, lines 52-54; col. 12, lines 46-52).

Regarding claims 11 and 33, Houston teaches

A) Receiving at the server (media research controller) the tracking identifier (col. 8, lines 39-46; col. 8, lines 63-66; col. 12, lines 19-23; col. 14, lines 20-26; col. 15, lines 50-54; col. 16, lines 48-51 & 60-65; col. 18, lines 59-67; col. 21, lines 22-27 & 63-66).

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B) Recording at the server the tracking identifier (col. 14, lines 1-31; col. 16, lines 8-22; col. 18, lines 59-67).

Regarding claims 12 and 34, Houston teaches recording auxiliary information (metadata or other associated data) at the server (col. 8, lines 39-42; col. 11, lines 15-25; col. 12, lines 10-15; col. 15, lines 33-37; col. 16, lines 60-col. 17, line 20; col. 17, lines 44-58).

Regarding claims 13 and 35, Houston teaches the auxiliary information comprises at least one of time of day and date (col. 16, lines 23-24; col. 16, lines 64-67; col. 17, lines 49-51; col. 24, lines 30-33).

Regarding claims 15 and 37, Houston teaches the tracking identifier is an industry standard code (col. 11, lines 17-26; Internet Protocol standard identifier and the PICS standard; col. 18, lines 6-7).

Regarding claims 16, 17, 38 and 39, Houston teaches the industry standard code (ISCI code) is defined by AAAA (col. 18, lines 6-7; in which ISCI code/system is owned/operated/defined by the AAAA).

Claim Rejections - 35 USC § 103

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 14, 18, 19, 20, 21, 22, 25, 26, 36, 40, 41, 42, 43 and 44, are rejected under 35 U.S.C. 103(a) as being unpatentable over Houston (US 6,353,929 B1) in view of Brunheroto et al. (US 2002/0087969 A1).

Regarding claims 3 and 25, Houston teaches encoding (embedding) tracking identifiers into television broadcast in intervals (col. 13, lines 9-12; col. 8, lines 21-26; col. 14, lines 16-20). However, Houston fails to teach in the VBI.

In an analogous art, Brunheroto teaches in the VBI for tracking viewing information of users (par. 42; par. 63).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the system of Houston to include the limitation in the VBI as taught by Brunheroto, for the added advantages of easily tracking viewer usage of content (Brunheroto – par. 42) and increasing the robustness of the tracking system by inserting real and dummy tags which prevent hostile software from automatically removing software (Houston - col. 13, lines 9-21 & col. 18, lines 48-58).

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Regarding claims 4 and 26, Houston in view of Brunheroto teach the tracking identifier comprises a URL (Houston - col. 11, lines 21-24; col. 17, lines 5-10; col. 18, lines 40-44; col. 23, lines 23-29; Brunheroto – par. 43, lines 34-42).

Regarding claims 14 and 36, Houston in view of Brunheroto teach the ATVEF standard (Brunheroto – par. 63; which would have been obvious because ATVEF is a well know standard for adding interactive/enhancement information to television signals).

Regarding claims 18 and 40, Houston teaches the client (panel member) constructs a dispatch/log comprising the tracking identifier (and URL) and transmits the dispatch to the server (MRC) (col. 14, lines 20-22; col. 15, line 59-col. 16, line 6; col. 17, lines 5-10; col. 11, lines 21-24; col. 17, lines 49-55; col. 18, lines 40-44; col. 23, lines 23-29).

However, Houston fails to teach constructs a URL.

In an analogous art, Brunheroto teaches constructing a URL for tracking specific viewer/client devices via the Internet (par. 67; par. 69-74, line 7).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the system of Houston to include constructs a URL as taught by Brunheroto for the added advantage more compactly/efficiently reporting back to an Internet server using standard web protocols (Houston – col. 4, lines 21-28).

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Regarding claims 19 and 41, Houston in view of Brunheroto teach the server comprises a web server (Houston – col. 8, lines 21-22 & lines 30-32; col. 11, lines 20-26; col. 10, lines 31-47; col. 12, line 58; Brunheroto; par. 68, lines 12-18; 106/107 – fig. 4; 307; fig. 3; par. 40, lines 7-8).

Regarding claims 20 and 42, Houston in view of Brunheroto teach the web server receives from the client the URL comprising the tracking identifier (Houston - col. 14, lines 20-22; col. 59-col. 16, line 6; col. 17, lines 5-10; col. 11, lines 21-24; col. 17, lines 49-55; col. 18, lines 40-44; col. 23, lines 23-29; Brunheroto - par. 67-74, line 7).

Regarding claims 21 and 43, Houston in view of Brunheroto teach in response to the receipt of the URL from the client (Houston - col. 8, lines 39-46; col. 8, lines 63-66; col. 12, lines 19-23; col. 14, lines 20-26; col. 15, lines 50-54; col. 16, lines 48-51 & 60-65; col. 18, lines 59-67; col. 21, lines 22-27 & 63-66), the web server record the URL comprising the tracking identifier (Houston - col. 14, lines 1-31; col. 16, lines 8-22; col. 18, lines 59-67; Brunheroto – par. 69 & 75).

Regarding claims 22 and 44, Houston in view of Brunheroto teach the web server records the URL in the web server's log file (Houston - col. 14, lines 20-24; col. 15, line 59-col. 16, line 6; col. 16, lines 47-51 & 60-64; col. 17, lines 5-10; col. 18, lines 59-67; col. 11, lines 21-24; col. 17, lines 49-55; Brunheroto – par. 74).

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clyde H. Jones III whose telephone number is 571-272-5946. The examiner can normally be reached on 9-5:30 p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Note to Applicant

Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

CJ


CHRISTOPHER GRANT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800